

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. BOX 1451
Alexandria, Virginia 22313

Mailed: March 29, 2005

Opposition No. 91159885

Schlage Lock Company

v.

Alto Products, Corp.

Karen Kuhlke, Attorney:

This case now comes up for consideration of applicant's request (filed December 28, 2004) for reconsideration of the Board's December 2, 2004 order. The request has been fully briefed.

By way of background, the Board's order, inter alia, denied as moot applicant's motion to compel further responses to document requests nos. 21-28, 34, 49 and 51 in view of "opposer's representation that it has now served its supplemental discovery responses in light of the entry of the protective agreement" and no reply brief from applicant to refute this representation was filed. In addition, the Board sustained opposer's objection to document request no. 65 and denied applicant's motion to compel as to this request.

A motion for reconsideration is a device that may be used to demonstrate that, based on the facts before the Board when it issued its order and on the applicable law, the Board's ruling is in error and requires appropriate change. The motion may not be used to introduce into the record facts which were previously known and which could have been presented earlier. See Trademark Rule 2.127(b) and TBMP § 518 (2d ed. rev. 2004).

In support of its request for reconsideration of the decision regarding document requests nos. 21-28, 34, 49 and 51, applicant states that "applicant has not received any documents pertaining to these requests."¹

First, applicant did not file a reply brief to refute opposer's representation that all responsive documents had been served. Second, opposer's September 22, 2004 letter, attached to the response to the motion to compel, clearly states that it has no documents responsive to requests nos. 21-28, 34, 49 and 51.

In support of the request for reconsideration of the decision regarding document request no. 65, applicant states that it has "narrowed request no. 65 by only requesting

¹ The Board notes that applicant includes on the first page of its request for reconsideration document request no. 31; however, applicant provides no argument with regard to this document request nor is it included in applicant's exhibits; therefore, the Board construes the request for reconsideration as covering only the ruling with regard to document requests nos. 21-28, 34, 49, 51 and 65.

opposer to produce Federal Court decisions and USPTO decisions pertaining to the D.C. Comics v. Kryptonite litigation and the Kryptonite mark." Applicant argues that because applicant "is entitled to the outcome of any legal proceeding involving the Kryptonite mark" and the "request asks for decisions reflecting the outcome of particular legal proceedings involving the Kryptonite mark" the Board should reconsider its decision.

First, applicant has presented this narrowed version of the request for the first time on reconsideration. Second, while opposer must provide the outcome of a proceeding it need not provide the decision. *Johnson & Johnson v. Rexall Drug Co.*, 186 USPQ 167, 172 (TTAB 1975) (responding party need only identify the legal proceedings by naming the parties involved, listing the jurisdiction and proceeding number, and stating the outcome, responding party need not identify all documents pertaining to such litigation.) Finally, the Board notes that the decisions are of public record.

Upon careful consideration of applicant's arguments on reconsideration, the Board is not persuaded that there was any error in the decision. Accordingly, applicant's request for reconsideration is denied.

Discovery and trial dates are reset as indicated below.²

DISCOVERY PERIOD TO CLOSE:	April 8, 2005
Thirty-day testimony period for party in position of plaintiff to close:	July 7, 2005
Thirty-day testimony period for party in position of defendant to close:	September 5, 2005
Fifteen-day rebuttal testimony period to close:	October 20, 2005

² Applicant's request that discovery and trial dates be extended is granted to the extent indicated above.